

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

NUGGETT CARMALT,
Charging Party/Appellant,

HRB CASE NO.0190439

-v-

FINAL AGENCY DECISION

FLATHEAD COUNTY AND FLATHEAD
COUNTY FAIR,
Respondent/Appellee.

Charging Party, Nuggett Carmalt (Carmalt), filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of retaliation. Following an informal investigation, the Department determined that reasonable cause supported Carmalt's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The hearing officer issued a Decision on October 25, 2021. The hearing officer entered judgment in favor of Flathead County and Flathead County Fair, and determined that discrimination did not occur.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on November 18, 2022. Charging Party appeared and presented oral argument on her own behalf. Maureen Lennon, attorney, appeared and presented oral argument on behalf of Flathead County and Flathead County Fair.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the

proceedings on which the findings were based did not comply with essential requirements of law. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

DISCUSSION

Before the Commission, Carmalt argues the hearing officer erred in determining the County had a nonretaliatory reason for denying Carmalt’s application to host a food vendor booth at the County fair. Carmalt had previously filed a discrimination complaint with the Human Rights Bureau against the County, which resulted in a no cause finding. The HRC affirmed that decision, and Carmalt filed a civil action in District Court challenging that finding. Carmalt argues the hearing officer erred in failing to find a causal link between Carmalt’s protected activity - filing the civil action - and the material adverse action – being denied the food vendor booth. Carmalt argues that the adverse action of her application being denied occurred approximately 18 months after Carmalt filed her district court action, on the very first occasion Carmalt applied for a food booth slot, and while her civil action was still pending. Carmalt further argues the hearing officer erred when failing to determine the county employee accused of the retaliation in the civil action was an active decision-maker on Carmalt’s food booth application and manipulated the process in a way that ensured that Carmalt would not be and could not, under the circumstances, be awarded a food booth.

Before the Commission, the County argues Carmalt has failed to prove or argue the hearing officer's factual determinations are not supported by substantial credible evidence, but rather argues the hearing failed to adopt Carmalt's suggested findings of fact. The County further argues that appellate review of a hearing officer decision does not include a reconsideration of the evidence presented at the contested case hearing.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines the hearing officer's findings of fact are supported by substantial credible evidence. It amends Finding of Fact 31, to correct the citation Hrg. Tr. 133:7-135:21. It accepts the hearing officer's conclusions of law as correct and adopts the hearing officer's decision with the correction to FOF 31 noted above.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED. Therefore, the Commission enters this order as its FINAL AGENCY DECISION.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections Mont. Code Ann. §§ 2-4-702 and 49-2-505*. This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. Mont. Code Ann. § *Section 2-4-702(2)*.

DATED this 9th day of February 2023.



Peter M. Damrow, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 23rd day of November 2022.

Nuggett Carmalt
1925 Church Drive
Kalispell, MT 59901

Maureen Lennon
Montana Association of Counties
2717 Skyway Drive
Helena, MT 59602

A handwritten signature in cursive script that reads "Annah Howard".

Annah Howard, Legal Secretary
Montana Human Rights Bureau